



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

April 29, 2005

MEMORANDUM

TO: Deputy Chief Immigration Judges
All Assistant Chief Immigration Judges
All Immigration Judges
All Court Administrators
All Support Staff

FROM: Office of the Chief Immigration Judge

SUBJECT: Interim Operating Policies and Procedures Memorandum No. 05-05:
Guidelines Relating to Compensatory Time Off for Travel

I INTRODUCTION

This Operating Policies and Procedure Memorandum (OPPM) establishes procedures for earning and using compensatory time resulting from official travel. Section 203 of the Federal Workforce Flexibility Act of 2004 (P.L. 108-411, dated October 30, 2004) authorized a new form of compensatory time off for time spent by an employee in a travel status away from the employee's official duty station when such time is not otherwise compensable. The Office of Personnel Management (OPM) issued interim regulations implementing this new law (Attachment A). These regulations became effective on January 28, 2005. Final regulations were expected to become effective March 28, 2005, but as of the date of this memorandum they still have not gone into effect. To assist agencies with implementing and administering this new compensatory time provision, OPM issued a document containing questions and answers (Q&A's) and illustrative examples (Attachment B). Nothing in this policy is intended to conflict with or change the implementing regulations.

II ELIGIBILITY

The Human Resources Staff issued interim guidance on this subject by memorandum, dated February 16, 2005. A copy of that memorandum is also attached and incorporated herein (Attachment C). The memorandum provides that "Members of the Senior Executive Service

(SES), Attorneys, Immigration Judges, or Federal wage System employees” are not eligible to earn compensatory time for travel. Thus, Immigration Judges, attorney-advisors, and judicial law clerks are not covered by this OPPM, and any reference to individuals who are covered herein exclude these categories of employees

III GENERAL RULE

As a general rule, travel will continue to be accomplished, to the greatest extent practicable, during normal business hours. This is particularly necessary in tight budget times.

IV SPECIFIC SITUATIONS

A. Case-Related Detail Travel

Immigration Judges are expected to complete cases expeditiously while on detail. Often, that requires them to start hearing cases on Monday mornings. Only in rare instances should it be necessary to have support staff present for cases that start on Monday mornings. If staff will be required to travel outside of normal business hours, written approval for such travel must be obtained from the responsible Assistant Chief Immigration Judge prior to the commencement of travel.

B. Court Evaluations

The Chief Clerk of the Immigration Court, with the concurrence of the Deputy Chief Immigration Judge and the Chief Immigration Judge, establishes the dates of court evaluations. All staff travel outside of normal duty hours for court evaluation purposes shall be reviewed in advance by the Chief Clerk of the Immigration Court, and approved by the Deputy Chief Immigration Judge.

C. Other Travel


Other staff travel, such as to attend conferences, training, or approved speaking engagements, will occur, to the maximum extent practicable, during normal business hours. Any such travel outside normal business hours must be approved in advance by the responsible Assistant Chief Immigration Judge.

V PROCEDURE

All travel authorizations involving staff travel outside normal business hours must be forwarded to the responsible Assistant Chief Immigration Judge/Deputy Chief Immigration Judge for approval prior to commencement of travel. Along with the travel authorization, the requesting official must submit a completed Travel Comp Time Authorization form showing: (1) the reason why travel outside normal duty hours is required and (2) an estimate of the amount

of compensatory time for travel involved. A copy of the form that is to be used is attached (Attachment D) to this OPPM. The Assistant Chief Immigration Judge/Deputy Chief Immigration Judge will then approve or disapprove the proposed travel plan. If approval is granted, the employee may travel outside normal business hours and receive compensatory time for that travel.

Once travel is completed, the exact amount of compensatory time earned will need to be calculated. The employee must calculate according to the rules (*e.g.*, deducting meal time, etc.) detailed in the attached guidance and submit a claim for and accounting of all compensatory time earned. This accounting must include, as appropriate: the employee's tour of duty; the distance (in miles) and the time (to nearest 15 minutes) from the employee's home to normal duty location; and the time spent having meals. The employee's claim for compensatory time must be submitted to the Assistant Chief Immigration Judge/Deputy Chief Immigration Judge who approved the travel outside normal business hours using the Travel Comp Time Worksheet/Approval form, which is also attached (Attachment E) to this OPPM. A copy of the Travel Comp Time Authorization form approving the travel must be attached to the approval form. If the comp time is approved, the claim will then be transmitted to the Immigration Court for inclusion in the Time and Attendance reporting. Specific Time and Attendance coding rules are contained in the February 16, 2005 memoranda (Attachment C).



Michael J. Creppy
Chief Immigration Judge

Attachments

Rules and Regulations

Federal Register

Vol. 70, No. 17

Thursday, January 27, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AK74

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to implement a provision of the Federal Workforce Flexibility Act of 2004, which established a new form of compensatory time off for time spent by an employee in a travel status away from the employee's official duty station when such time is not otherwise compensable.

DATES: *Effective Date:* The interim regulations will become effective on January 28, 2005.

Comment Date: Comments must be received on or before March 28, 2005.

ADDRESSES: Send or deliver written comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415, by FAX at (202) 606-0824, or by e-mail at pay-performance-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Vicki Draper by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations to implement a new compensatory time off provision established by section 203 of the Federal Workforce Flexibility Act of 2004 (Public Law 108-411, October 30, 2004). Section 203 amended subchapter V of chapter 55 of title 5, United States

Code, by adding a new section 5550b, which establishes a new form of compensatory time off for time spent by an employee in a travel status away from the employee's official duty station when such time is not otherwise compensable. Under 5 U.S.C. 5548, OPM has general authority to issue regulations necessary to administer the premium pay provisions in subchapter V of chapter 55. These regulations amend part 550 of title 5, Code of Federal Regulations, by adding a new subpart N, Compensatory Time Off for Travel.

Section 203(c) provides that this new form of compensatory time off for travel takes effect on the earlier of (1) the effective date of implementing regulations or (2) the 90th day after the date of the law's enactment (January 28, 2005). These regulations are effective on January 28, 2005.

In § 550.1403, we provide definitions of various terms used in subpart N. For example, the term "travel" is defined to mean officially authorized travel—that is, travel for work purposes that is approved by an authorized agency official or otherwise authorized under established agency policies. The term "travel status" is defined to mean travel as described in § 550.1404 that is creditable for the purpose of accruing compensatory time off under subpart N. To make clear that an employee may not receive double compensation for travel hours, the term "travel status" as used in subpart N does not include travel time that is otherwise compensable as hours of work. For example, travel hours outside an employee's regular working hours that are compensable hours of work under 5 U.S.C. 5542(b)(2)(B) and 5 CFR 550.112(g)(2), may not also be credited as time in a travel status under subpart N.

The term "compensable" is defined to make clear what periods of time are "not otherwise compensable" and thus potentially creditable for the purpose of compensatory time off for travel under subpart N. Time is considered compensable if the time is creditable as hours of work for the purpose of determining a specific pay entitlement. This is true even when that work time does not result in additional compensation due to the application of pay limitations. For example, under the availability pay provisions in 5 U.S.C. 5545a, all unscheduled duty hours

(including any hours in excess of the minimum hours necessary in a 12-month period to justify the payment of availability pay) are considered "compensable" hours, since availability pay represents full compensation for all unscheduled duty hours. In addition, even though a criminal investigator may not receive the full 25-percent availability pay because of the biweekly premium pay limitation in 5 U.S.C. 5547, all hours of a type that are creditable as unscheduled duty hours for the purpose of availability pay are considered to be compensable. Thus, with respect to any hours of a type that is creditable as unscheduled duty hours for availability pay purposes, any travel time during such hours are not creditable under subpart N.

In § 550.1404(b), we clarify that time in travel status includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the "usual waiting time" that precedes or interrupts such travel. Generally, passengers are required to arrive at a transportation terminal (e.g., airport or train station) at a designated pre-departure time (e.g., 1 to 2 hours prior to the scheduled departure time of an airplane, depending on whether it is a domestic or international flight). Such waiting time at the transportation terminal is considered usual waiting time and is creditable time in a travel status. The concept of "usual waiting time" is currently used in determining creditable overtime hours of work under title 5 and the Fair Labor Standards Act of 1938, as amended.

In addition, when an employee's travel is interrupted (i.e., the employee travels to an intervening transportation terminal and has to wait for a connecting flight to continue traveling to a temporary duty station), usual waiting time at the intervening transportation terminal also is creditable time in a travel status, subject to exclusions for bona fide meal periods. If the employee experiences an extended (i.e., not usual) waiting time during which he or she is free to use the time for his or her own purposes (e.g., rest or sleep), the extended waiting time that is outside the employee's regular working hours is not creditable time in a travel status. Once the employee arrives at a temporary duty station, he or she is not

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AK74

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to implement a provision of the Federal Workforce Flexibility Act of 2004, which established a new form of compensatory time off for time spent by an employee in a travel status away from the employee's official duty station when such time is not otherwise compensable.

DATES: *Effective Date:* The interim regulations will become effective on January 28, 2005.

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ADDRESSES: Send or deliver written comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415, by FAX at (202) 606-0824, or by e-mail at pay-performance-policy@opm.gov.

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Code, by adding a new section 5550b, which establishes a new form of compensatory time off for time spent by an employee in a travel status away from the employee's official duty station when such time is not otherwise compensable. Under 5 U.S.C. 5548, OPM has general authority to issue regulations necessary to administer the premium pay provisions in subchapter V of chapter 55. These regulations amend part 550 of title 5, Code of Federal Regulations, by adding a new subpart N, Compensatory Time Off for Travel.

Section 203(c) provides that this new form of compensatory time off for travel takes effect on the earlier of (1) the effective date of implementing regulations or (2) the 90th day after the date of the law's enactment (January 28, 2005). These regulations are effective on January 28, 2005.

In § 550.1403, we provide definitions of various terms used in subpart N. For example, the term "travel" is defined to mean officially authorized travel—that is, travel for work purposes that is approved by an authorized agency official or otherwise authorized under established agency policies. The term "travel status" is defined to mean travel as described in § 550.1404 that is creditable for the purpose of accruing compensatory time off under subpart N. To make clear that an employee may not receive double compensation for travel hours, the term "travel status" as used in subpart N does not include travel time that is otherwise compensable as hours of work. For example, travel hours outside an employee's regular working hours that are compensable hours of work under 5 U.S.C. 5542(b)(2)(B) and 5 CFR 550.112(g)(2), may not also be credited as time in a travel status under subpart N.

The term "compensable" is defined to make clear what periods of time are "not otherwise compensable" and thus potentially creditable for the purpose of compensatory time off for travel under subpart N. Time is considered compensable if the time is creditable as hours of work for the purpose of determining a specific pay entitlement. This is true even when that work time does not result in additional compensation due to the application of pay limitations. For example, under the availability pay provisions in 5 U.S.C. 5545a, all unscheduled duty hours

(including any hours in excess of the minimum hours necessary in a 12-month period to justify the payment of availability pay) are considered "compensable" hours, since availability pay represents full compensation for all unscheduled duty hours. In addition, even though a criminal investigator may not receive the full 25-percent availability pay because of the biweekly premium pay limitation in 5 U.S.C. 5547, all hours of a type that are creditable as unscheduled duty hours for the purpose of availability pay are considered to be compensable. Thus, with respect to any hours of a type that is creditable as unscheduled duty hours for availability pay purposes, any travel time during such hours are not creditable under subpart N.

In § 550.1404(b), we clarify that time in travel status includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the "usual waiting time" that precedes or interrupts such travel. Generally, passengers are required to arrive at a transportation terminal (e.g., airport or train station) at a designated pre-departure time (e.g., 1 to 2 hours prior to the scheduled departure time of an airplane, depending on whether it is a domestic or international flight). Such waiting time at the transportation terminal is considered usual waiting time and is creditable time in a travel status. The concept of "usual waiting time" is currently used in determining creditable overtime hours of work under title 5 and the Fair Labor Standards Act of 1938, as amended.

In addition, when an employee's travel is interrupted (i.e., the employee travels to an intervening transportation terminal and has to wait for a connecting flight to continue traveling to a temporary duty station), usual waiting time at the intervening transportation terminal also is creditable time in a travel status, subject to exclusions for bona fide meal periods. If the employee experiences an extended (i.e., not usual) waiting time during which he or she is free to use the time for his or her own purposes (e.g., rest or sleep), the extended waiting time that is outside the employee's regular working hours is not creditable time in a travel status. Once the employee arrives at a temporary duty station, he or she is not

considered to be in a travel status just because he or she is away from the official duty station. In other words, the time spent at a temporary duty station between arrival and departure cannot be credited as time in a travel status.

In § 550.1404(c) and (d), we clarify when it is appropriate to offset creditable time in a travel status by the amount of time the employee spends in normal commuting between home and work. For example, such an offset applies to an employee who travels directly between his or her home and a temporary duty station outside the limits of the employee's official duty station. Also, the commuting time offset applies if an employee is required to travel between home and a transportation terminal outside the limits of his or her official duty station.

Section 550.1405 addresses the crediting of compensatory time off for travel. Qualifying compensatory time off for travel must be credited and used in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). This is consistent with OPM's standardized policy for charging annual and sick leave in increments of one-tenth or one-quarter of an hour. An employee must comply with his or her agency's procedures for requesting credit of compensatory time off and the employee must file such requests within the time period required by the agency.

Section 550.1406 addresses the usage of accrued compensatory time off for travel. An employee must submit a request to his or her supervisor to schedule time off from his or her normal tour of duty for the purpose of using accrued compensatory time off.

In an effort to give employees sufficient time to use their accumulated compensatory time off and to enhance the efficiency and effectiveness of standardized payroll policies and processes, § 550.1407(a) provides that an employee must use his or her accrued compensatory time off within 26 pay periods after it is earned or forfeit such compensatory time off, except in certain circumstances (e.g., when an employee separates or is placed in a leave without pay status to perform service in the uniformed services with restoration rights).

Section 550.1407(b) provides that, upon voluntary transfer to another agency, an employee's unused compensatory time off balance must be forfeited.

Section 550.1407(c) provides that an employee must forfeit any unused compensatory time off when he or she separates from Federal service, except in the circumstances described in § 550.1407(a)(2).

Section 550.1407(d) provides that an employee must forfeit any unused compensatory time off when he or she moves to a Federal position not covered by subpart N. However, this requirement does not prevent an agency from using another legal authority to give the employee credit for compensatory time off for travel equal to the forfeited amount.

Section 550.1408 restates the statutory prohibition on paying employees for unused compensatory time off for travel earned under this subpart.

Section 550.1409 makes clear that compensatory time off for travel earned under this subpart is not considered in applying the biweekly and annual premium pay limitations in 5 U.S.C. 5547 or the aggregate pay limitation on pay in 5 U.S.C. 5307.

In exercising our broad regulatory authority under 5 U.S.C. 5548, we have deliberately taken a conservative approach with respect to the time limit on the use of earned compensatory time off. We are mindful that we are dealing with a new type of employee benefit which presents new issues and administrative challenges for agencies. We believe it is appropriate to approach this new benefit without imposing overly burdensome administrative procedures.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. These regulations implement a provision of Public Law 108-411 that becomes effective on the effective date of these regulations. The waiver of the requirements for proposed rulemaking and a delay in the effective date are necessary to ensure timely implementation of the law as intended by Congress.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Kay Coles James,
Director.

■ Accordingly, OPM is amending 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105-277, 112 Stat. 2681-101 and 2681-828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

■ 2. A new subpart N is added to read as follows:

Subpart N—Compensatory Time Off for Travel

Sec.

- 550.1401 Purpose.
- 550.1402 Coverage.
- 550.1403 Definitions.
- 550.1404 Creditable travel time.
- 550.1405 Crediting compensatory time off.
- 550.1406 Usage of accrued compensatory time off.
- 550.1407 Forfeiture of unused compensatory time off.
- 550.1408 Prohibition against payment for unused compensatory time off.
- 550.1409 Inapplicability of premium pay and aggregate pay caps.

Subpart N—Compensatory Time Off for Travel

§ 550.1401 Purpose.

This subpart contains OPM regulations implementing 5 U.S.C. 5550b, which establishes a new type of compensatory time off. Subject to the conditions specified in this subpart, an employee is entitled to earn, on an hour-for-hour basis, compensatory time off for time in a travel status away from the employee's official duty station when the travel time is not otherwise compensable.

§ 550.1402 Coverage.

This subpart applies to an employee as defined in 5 U.S.C. 5541(2) who is employed by an agency.

§ 550.1403 Definitions.

In this subpart:

Agency means an Executive agency as defined in 5 U.S.C. 105.

Compensable refers to periods of time that are creditable as hours of work for the purpose of determining a specific pay entitlement, even when that work

time may not actually generate additional compensation because of applicable pay limitations.

Compensatory time off means compensatory time off for travel that is credited under the authority of this subpart.

Official duty station means the geographic area surrounding an employee's regular work site that is the same as the area designated by the employing agency for the purpose of determining whether travel time is compensable for the purpose of determining overtime pay, consistent with the regulations in 5 CFR 550.112(j) and 551.422(d).

Regular working hours means the days and hours of an employee's regularly scheduled administrative workweek established under 5 CFR part 610.

Scheduled tour of duty for leave purposes means an employee's regular hours for which he or she may be charged leave under 5 CFR part 630 when absent. For full-time employees, it is the 40-hour basic workweek as defined in 5 CFR 610.102. For employees with an uncommon tour of duty as defined in 5 CFR 630.201, it is the uncommon tour of duty.

Travel means officially authorized travel—i.e., travel for work purposes that is approved by an authorized agency official or otherwise authorized under established agency policies.

Travel status means travel time as described in § 550.1404 that is creditable in accruing compensatory time off for travel under this subpart, excluding travel time that is otherwise compensable under other legal authority.

§ 550.1404 Creditable travel time.

(a) **General.** Subject to the conditions specified in this subpart, an agency must credit an employee with compensatory time off for time in a travel status if—

(1) The employee is required to travel away from the official duty station; and

(2) The travel time is not otherwise compensable hours of work under other legal authority.

(b) **Travel status.** (1) Time in a travel status includes the time an employee actually spends traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel, subject to the exclusions specified in paragraphs (b)(2) and (b)(3) of this section and the requirements in paragraphs (c) and (d) of this section. Time spent at a temporary duty station between arrival and departure is not

time in a travel status. Determinations regarding what is creditable as “usual waiting time” are within the sole and exclusive discretion of the employing agency.

(2) Bona fide meal periods during actual travel time or waiting time are not creditable as time in a travel status.

(3) If an employee experiences an extended (i.e., not usual) waiting time between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, the extended waiting time is not creditable as time in a travel status.

(c) **Travel between home and a temporary duty station.** (1) If an employee is required to travel directly between his or her home and a temporary duty station outside the limits of the employee's official duty station, the travel time is creditable as time in a travel status if otherwise qualifying under this subpart. However, the agency must deduct from such travel hours the time the employee would have spent in normal home-to-work or work-to-home commuting.

(2) In the case of an employee who is offered one mode of transportation and who is permitted to use an alternative mode of transportation, or who travels at a time or by a route other than that selected by the agency, the agency must determine the estimated amount of time in a travel status the employee would have had if the employee had used the mode of transportation offered by the agency or traveled at the time and by the route selected by the agency. In determining time in a travel status under this subpart, the agency must credit the employee with the lesser of the estimated time in a travel status or the actual time in a travel status.

(3) In the case of an employee who is on a multiple-day travel assignment and who chooses, for personal reasons, not to use temporary lodgings at the temporary duty station, but to return home at night or on a weekend, only travel from home to the temporary duty station on the 1st day and travel from the temporary duty station to home on the last day that is otherwise qualifying as time in a travel status under this subpart is mandatorily creditable (subject to the deduction of normal commuting time). Travel to and from home on other days is not creditable travel time unless the agency, at its discretion, determines that credit should be given based on the net savings to the Government from reduced lodging costs, considering the value of lost labor time attributable to compensatory time off. The dollar value of an hour of compensatory time off for

this purpose is equal to the employee's hourly rate of basic pay as defined in § 550.103.

(d) **Time spent traveling to or from a transportation terminal as part of travel away from the official duty station.** If an employee is required to travel between home and a transportation terminal (e.g., airport or train station) within the limits of his or her official duty station as part of travel away from that duty station, the travel time outside regular working hours to or from the terminal is considered to be equivalent to commuting time and is not creditable time in a travel status. If the transportation terminal is outside the limits of the employee's official duty station, the travel time to or from the terminal outside regular working hours is creditable as time in a travel status, but is subject to an offset for the time the employee would have spent in normal home-to-work or work-to-home commuting. If the employee travels between a worksite and a transportation terminal, the travel time outside regular working hours is creditable as time in a travel status, and no commuting time offset applies.

§ 550.1405 Crediting compensatory time off.

(a) Upon a request filed in accordance with the procedures established under paragraph (b) of this section, an employee is entitled to credit for compensatory time off for travel under the conditions specified in this subpart. The employing agency must credit an employee with compensatory time off for creditable time in a travel status as provided in § 550.1404. The agency may authorize credit in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Agencies must track and manage compensatory time off granted under this subpart separately from other forms of compensatory time off.

(b) An employee must comply with his or her agency's procedures for requesting credit of compensatory time off under this section. Employees must file such requests within the time period required by the agency.

§ 550.1406 Usage of accrued compensatory time off.

(a) An employee must request permission from his or her supervisor to schedule the use of his or her accrued compensatory time off in accordance with agency-established policies and procedures.

(b) Compensatory time off may be used when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. An

employee must use earned compensatory time off under this subpart in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes).

§ 550.1407 Forfeiture of unused compensatory time off.

(a) *After 26 pay periods.* (1) Except as provided in paragraph (a)(2) of this section, an employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was credited. If an employee fails to use the compensatory time off within 26 pay periods after it was credited, he or she must forfeit such compensatory time off.

(2) If an employee with unused compensatory time off separates from Federal service or is placed in a leave without pay status in the following circumstances and later returns to service with the same (or successor) agency, the employee must use all of the compensatory time off by the end of the 26th pay period following the pay period in which the employee returns to duty, or such compensatory time off will be forfeited:

(i) The employee separates or is placed in a leave without pay status to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and later returns to service through the exercise of a reemployment right provided by law, Executive order, or regulation; or

(ii) The employee separates or is placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81 and later recovers sufficiently to return to work.

(b) *Upon transfer to another agency.* When an employee voluntarily transfers to another agency (including a promotion or change to lower grade action), he or she must forfeit his or her unused compensatory time off.

(c) *Upon separation.* (1) When an employee separates from Federal service, any unused compensatory time off is forfeited, except as provided in paragraph (c)(2) of this section.

(2) Unused compensatory time off will not be forfeited but will be held in abeyance in the case of an employee who separates from Federal service and later returns to service with the same (or successor) agency under the circumstances described in paragraph (a)(2) of this section.

(d) *Upon movement to a noncovered position.* When an employee moves to a Federal position not covered by this subpart, he or she forfeits any unused compensatory time off. This requirement does not prevent an agency

from using another legal authority to give the employee credit for compensatory time off equal to the forfeited amount.

§ 550.1408 Prohibition against payment for unused compensatory time off.

As provided by 5 U.S.C. 5550b(b), an individual may not receive payment under any circumstances for any unused compensatory time off he or she earned under this subpart. This prohibition against payment applies to surviving beneficiaries in the event of the individual's death.

§ 550.1409 Inapplicability of premium pay and aggregate pay caps.

Accrued compensatory time off under this subpart is not considered in applying the premium pay limitations established under 5 U.S.C. 5547 and 5 CFR 550.105 through 550.107 or the aggregate limitation on pay established under 5 U.S.C. 5307 and 5 CFR part 530, subpart B.

[FR Doc. 05-1457 Filed 1-26-05; 8:45 am]
BILLING CODE 6325-39-P

**OFFICE OF PERSONNEL
MANAGEMENT**

5 CFR Part 576

RIN 3206-AJ76

**Voluntary Separation Incentive
Payments**

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on Voluntary Separation Incentive Payments (generally known as "VSIPs" or "buyouts"). These final regulations explain how an agency requests authority from OPM to offer Voluntary Separation Incentive Payments under the Chief Human Capital Officers Act of 2002, which applies to most executive branch agencies.

These final regulations also explain how agencies must inform employees returning from military leave of any Voluntary Separation Incentive Payment offers they may have missed while on military leave. Finally, these regulations explain how in exceptional circumstances an agency that is hiring a former employee who previously received a Voluntary Separation Incentive Payment may request that OPM waive the general requirement that the individual repay the incentive if

reemployed in the Government within 5 years of receiving the incentive.

DATES: These regulations are effective January 27, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon K. Ginley at (202) 606-0960, fax at (202) 606-2329, TTY at (202) 418-3134, or e-mail at sharon.ginley@opm.gov.

SUPPLEMENTARY INFORMATION: Section 1313(a) of the Chief Human Capital Officers Act of 2002 (Public Law 107-296; 116 Stat. 2135) added new sections 3521 through 3525 to title 5, United States Code, to allow executive branch agencies, at their option, to offer Voluntary Separation Incentive Payments to employees who separate by voluntary retirement or by resignation. On February 4, 2003, OPM issued interim regulations to revise part 576 of title 5, Code of Federal Regulations, with a request for public comments. These final regulations incorporate public comments and make clarifying revisions.

To offer buyouts, an agency must submit a plan for OPM approval. The plan must describe how the agency will use Voluntary Separation Incentive Payments as a tool to facilitate its restructuring goals. OPM will review each agency's plan and, in consultation with the Director of the Office of Management and Budget (OMB), may make any appropriate modifications to the agency's plan for Voluntary Separation Incentive Payments. The review may include a consideration of costs and benefits associated with using the authority. OPM will issue supplemental guidance for agency use in preparing a VSIP implementation plan. The agency must have OPM approval before using this flexibility.

A former employee who accepts any employment with the Government of the United States for compensation within 5 years after the date of separating for a Voluntary Separation Incentive Payment must repay the entire amount of the incentive payment before the first day of reemployment in the Federal service. Under exceptional circumstances, and at the request of the hiring agency, the OPM Director may waive the repayment requirement for former executive branch employees.

Comments Received

OPM received five comments from agencies concerning the interim regulations. One agency pointed out that the interim regulations contained the words " * * * to offer Voluntary Separation Incentive Payments to surplus or displaced employees." The agency pointed out that the words

Questions and Answers on Compensatory Time Off for Travel

Q1. What is compensatory time off for travel?

A. Compensatory time off for travel is a new form of compensatory time off that may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable.

Q2. When is this provision effective?

A. This provision is effective on January 28, 2005.

Q3. Are all employees covered by this provision?

A. The new compensatory time off provision applies to an "employee" as defined in 5 U.S.C. 5541(2) who is employed in an "Executive agency" as defined in 5 U.S.C. 105, without regard to whether the employee is exempt from or covered by the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended. **The definition includes employees in senior-level (SL) and scientific or professional (ST) positions, but not members of the Senior Executive Service.**

Q4. What qualifies as travel for the purpose of this provision?

A. To qualify for this purpose, travel must be officially authorized. In other words, travel must be for work purposes and must be approved by an authorized agency official or otherwise authorized under established agency policies.

Q5. An employee receives compensatory time off for travel only for those hours spent in a travel status. What qualifies as time in a travel status?

A. Travel status includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel.

Q6. What is meant by "usual waiting time"?

A. Airline travelers generally are required to arrive at the airport at a designated pre-departure time (e.g., 1 or 2 hours before the scheduled departure, depending on whether the flight is domestic or international). Such waiting time at the airport is considered usual waiting time and is creditable time in a travel status. In addition, time spent at an intervening airport waiting for a connecting flight (e.g., 1 or 2 hours) also is creditable time in a travel status, subject to exclusions for bona fide meal periods. In all cases, determinations regarding what is creditable as "usual waiting time" are within the sole and exclusive discretion of the employing agency.

Q7. What if an employee experiences an "extended" waiting period?

A. If an employee experiences an unusually long wait prior to his or her initial departure or between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, the extended waiting time that is outside the employee's regular working hours is not creditable time in a travel status. An extended waiting period that

occurs during an employee's regular working hours is compensable as part of the employee's regularly scheduled administrative workweek.

Q8. Do meal periods count as time in a travel status?

A. For the purpose of earning compensatory time off for travel, bona fide meal periods are not considered time in a travel status. For example, if an employee spends an uninterrupted hour eating a meal at an airport restaurant while waiting for a connecting flight, that hour is not considered time in a travel status.

Q9. What happens once an employee reaches a temporary duty station?

A. Once an employee arrives at the temporary duty station, he or she is no longer considered to be in a travel status. Any time spent at a temporary duty station between arrival and departure is not creditable travel time for the purpose of earning compensatory time off.

Q10. When is it appropriate for an agency to offset creditable time in a travel status by the amount of time the employee spends in normal commuting between home and work?

A. If an employee travels directly between his or her home and a temporary duty station outside the limits of the employee's official duty station (e.g., driving to and from a 3-day conference), the agency must deduct the employee's normal home-to-work/work-to-home commuting time from the creditable travel time. The agency must also deduct an employee's normal commuting time from the creditable travel time if the employee is required—outside of regular working hours—to travel between home and a transportation terminal (e.g., an airport or train station) outside the limits of the employee's official duty station.

Q11. What if an employee travels to a transportation terminal within the limits of his or her official duty station?

A. An employee's time spent traveling outside of regular working hours to or from a transportation terminal within the limits of his or her official duty station is considered equivalent to commuting time and is not creditable time in a travel status for the purpose of earning compensatory time off.

Q12. What if an employee travels from a worksite to a transportation terminal?

A. If an employee travels between a worksite and a transportation terminal, the travel time outside regular working hours is creditable as time in a travel status, and no commuting time offset applies.

Q13. How is compensatory time off for travel earned and credited?

A. Compensatory time off for travel is earned for qualifying time in a travel status. Agencies may authorize credit in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Agencies must track and manage compensatory time off for travel separately from other forms of compensatory time off.

Q14. Is there a limitation on the amount of compensatory time off for travel an employee

may earn?

A. No.

Q15. How does an employee request credit for compensatory time off for travel?

A. Agencies may establish procedures for requesting credit for compensatory time off for travel. An employee must comply with his or her agency's procedures for requesting credit of compensatory time off, and the employee must file a request for such credit within the time period established by the agency.

Q16. How does an employee use accrued compensatory time off for travel?

A. An employee must request permission from his or her supervisor to schedule the use of his or her accrued compensatory time off for travel in accordance with agency policies and procedures. Compensatory time off for travel may be used when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. Employees must use accrued compensatory time off for travel in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes).

Q17. How long does an employee have to use accrued compensatory time off for travel?

A. An employee must use his or her accrued compensatory time off for travel by the end of the 26th pay period after the pay period in which it was earned or the employee must forfeit such compensatory time off, except in certain circumstances. (See Q18.)

Q18. Under what circumstances does an employee maintain credit for accrued compensatory time off for travel beyond the 26th pay period after the pay period in which it was earned?

A. Unused compensatory time off for travel will be held in abeyance for an employee who separates, or is placed in a leave without pay status, and later returns following (1) separation or leave without pay to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and a return to service through the exercise of a reemployment right or (2) separation or leave without pay due to an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81. The employee must use all of the compensatory time off held in abeyance by the end of the 26th pay period following the pay period in which the employee returns to duty, or such compensatory time off will be forfeited.

Q19. May unused compensatory time off for travel be restored if an employee does not use it by the end of the 26th pay period after the pay period in which it was earned?

A. Except in certain circumstances (see Q18), any compensatory time off for travel not used by the end of the 26th pay period after the pay period in which it was earned must be forfeited.

Q20. What happens to an employee's unused compensatory time off for travel upon separation from Federal service?

A. Except in certain circumstances (see Q18), an employee must forfeit all unused compensatory

time off for travel upon separation from Federal service.

Q21. May an employee receive a lump-sum payment for accrued compensatory time off for travel upon separation from an agency?

A. No. The law prohibits payment for unused compensatory time off for travel under any circumstances.

Q22. What happens to an employee's accrued compensatory time off for travel upon transfer to another agency?

A. When an employee voluntarily transfers to another agency (including a promotion or change to lower grade action), the employee must forfeit all of his or her unused compensatory time off for travel.

Q23. What happens to an employee's accrued compensatory time off for travel when the employee moves to a position that is not covered by the regulations in 5 CFR part 550, subpart N?

A. When an employee moves to a position in an agency that is not covered by the compensatory time off for travel provisions (e.g., the United States Postal Service), the employee must forfeit all of his or her unused compensatory time off for travel. However, the gaining agency may use its own legal authority to give the employee credit for such compensatory time off.

Q24. Is compensatory time off for travel considered in applying the premium pay and aggregate pay caps?

A. No. Compensatory time off for travel may not be considered in applying the biweekly or annual premium pay limitations established under 5 U.S.C. 5547 or the aggregate limitation on pay established under 5 U.S.C. 5307.

Q25. When are criminal investigators who receive availability pay precluded from earning compensatory time off for travel?

A. Compensatory time off for travel is earned only for hours that are not otherwise compensable. The term "compensable" is defined in 5 CFR 550.1403 to include any hours of a type that are creditable under other compensation provisions, even if there are compensation caps that limit the payment of premium pay for those hours (e.g., the 25 percent cap on availability pay and the biweekly premium pay cap). For availability pay recipients, this means that hours of travel are not creditable as time in a travel status for compensatory time off purposes if the hours are (1) compensated by basic pay, (2) regularly scheduled overtime hours creditable under 5 U.S.C. 5542, or (3) "unscheduled duty hours" as described in 5 CFR 550.182(a), (c), and (d).

Q26. If an employee is required to travel on a Federal holiday (or an "in lieu of" holiday), is the employee entitled to receive compensatory time off for travel?

A. Although most employees do not receive holiday premium pay for time spent traveling on a holiday (or an "in lieu of" holiday), an employee continues to be entitled to pay for the holiday in the same manner as if the travel were not required. Thus, employees may not earn compensatory

time off for travel during basic (non-overtime) holiday hours because they are entitled to their rate of basic pay for those hours. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is *not otherwise compensable*.

Q27. If an employee's regularly scheduled tour of duty is Sunday through Thursday and the employee is required to travel on a Sunday during regular working hours, is the employee entitled to earn compensatory time off for travel?

A. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. Thus, an employee may not earn compensatory time off for traveling on a workday during regular working hours because the employee is receiving his or her rate of basic pay for those hours.

Compensatory Time Off for Travel:

Examples of Creditable Travel Time

Example 1: Travel to a temporary duty station on a workday

From home to business meeting

6:00 - 7:00 a.m.	7:00 - 8:00 a.m.	8:00 - 8:30 a.m.	8:30 - 11:30 a.m.	11:30 a.m. - 12:30 p.m.
Drive to airport	Wait at airport	Wait at airport	Plane departs/lands	Drive to worksite
<i>Noncreditable travel time</i>	<i>Creditable travel time</i>	<i>Regular working hours</i>	<i>Regular working hours</i>	<i>Regular working hours</i>

From business meeting to home

5:00 - 6:00 p.m.	6:00 - 6:30 p.m.	6:30 - 7:30 p.m.	7:30 - 10:30 p.m.	10:30 - 11:30 p.m.
Drive to airport	Dinner at airport	Wait at airport	Plane departs/lands	Drive home
<i>Creditable travel time</i>	<i>Noncreditable travel time</i>	<i>Creditable travel time</i>	<i>Creditable travel time</i>	<i>Noncreditable travel time</i>

On a workday, an employee is required to travel to a temporary duty station for an afternoon meeting. The employee's regular working hours are 8:00 a.m. to 4:30 p.m. In total, the employee spends 13 hours (6:00 a.m. to 12:30 p.m. and 5:00 p.m. to 11:30 p.m.) traveling to and from the worksite. However, the time between 8:00 a.m. and 12:30 p.m. is compensable as part of the employee's regular working hours. Also, an employee's time spent traveling outside of regular working hours to or from a transportation terminal (e.g., an airport or train station) within the limits of his or her official duty station is considered to be equivalent to commuting time and is not creditable travel time. (See 5 CFR 550.1404(d).) In this case, the employee spends 2 hours traveling to and from an airport within the limits of his official duty station. Finally, bona fide

meal periods during actual travel or waiting time are not considered to be creditable travel time. (See 5 CFR 550.1404(b)(2).) Therefore, the 30 minutes the employee spends having dinner while waiting at the airport on the return trip home is not creditable travel time.

In this example, the employee's compensatory time off for travel entitlement is as follows:

Total travel time	13 hours
<i>minus</i>	
Travel time within regular working hours	4.5 hours
Travel to/from airport within limits of official duty station	2 hours
Bona fide meal period	0.5 hour
Compensatory time off for travel	6 hours

Example 2: Travel to a temporary duty station on a nonworkday

Travel from home to a hotel on a Sunday

5:00 - 6:00 p.m.	6:00 - 7:30 p.m.	7:30 - 10:00 p.m.	10:00 - 10:30 p.m.
Drive to airport	Wait at airport	Plane departs/lands	Drive to hotel
<i>Noncreditable travel time</i>	<i>Creditable travel time</i>	<i>Creditable travel time</i>	<i>Creditable travel time</i>

Travel from a hotel to home on the following Saturday

6:30 - 7:00 a.m.	7:00 - 7:30 a.m.	7:30 - 10:30 a.m.	10:30 a.m. - 1:00 p.m.	1:00 - 2:00 p.m.
Drive to airport	Breakfast at airport	Wait at airport—2 hour delay	Plane departs/lands	Drive home
<i>Creditable travel time</i>	<i>Noncreditable travel time</i>	<i>Creditable travel time</i>	<i>Creditable travel time</i>	<i>Noncreditable travel time</i>

An employee is required to travel to a temporary duty station for a week-long conference. The employee's regular working hours are 8:00 a.m. to 4:30 p.m., Monday through Friday. Because the conference begins early Monday morning, the employee travels to a hotel at the temporary duty station the Sunday evening before the conference. The conference is scheduled to continue into the evening on Friday, so the employee returns home on Saturday morning.

In total, the employee spends 13 hours (5:00 p.m. to 10:30 p.m. on Sunday and 6:30 a.m. to 2:00 p.m. on the following Saturday) traveling to and from the conference. However, the hour the employee spends on Sunday traveling to the airport and the hour the employee spends on Saturday traveling from the airport within the limits of her official duty station is considered equivalent to commuting time and is not creditable time in a travel status. Also, the 30 minutes the employee spends having breakfast while waiting at the airport on the return home is considered a bona fide meal period and is not creditable travel time.

In this example, the employee's compensatory time off for travel entitlement is as follows:

Total travel time	13 hours
<i>minus</i>	
Travel to/from airport within limits of official duty station	2 hours
Bona fide meal period	0.5 hour
Compensatory time off for travel	10.5 hours

Example 3: Travel from a temporary duty station on a workday (with cancelled connecting flight)

From temporary duty station to intervening airport for connecting flight on a Friday.

5:30 - 6:30 a.m.	6:30 - 8:00 a.m.	8:00 - 11:00 a.m.	11:00 - 3:00 p.m.
Drive to airport	Wait at airport	Plane departs/lands	Connecting flight delayed due to severe weather.

Flights are cancelled.

<i>Creditable travel time</i>	<i>Creditable travel time</i>	<i>Regular working hours</i>	<i>Regular working hours</i>
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Employee checks into hotel near airport—No creditable travel time. Employee returns to airport on Saturday morning.

6:30 - 7:00 a.m.	7:00 - 8:30 a.m.	8:30 a.m. - 12:00noon	12:00noon - 1:00 p.m.
Drive to airport	Wait at airport	Plane departs/lands	Drive home

Creditable travel time Creditable travel time Creditable travel time Noncreditable travel time

On a Friday (workday), an employee is required to travel from a temporary duty station to home.

However, due to severe weather, the employee's connecting flight is cancelled until Saturday morning (nonworkday). On Friday, the employee's regular working hours are 8:00 a.m. to 4:30 p.m. In total, the employee spends 16 hours (5:30 a.m. to 3:00 p.m. and 6:30 a.m. to 1:00 p.m.) traveling from the worksite. However, the time between 8:00 a.m. and 3:00 p.m. is compensable as part of the employee's regular working hours. The extended waiting period from 3:00 p.m. until the employee returned to the airport on Saturday morning is not creditable travel time, since the employee was free to use the time for his or her own purposes. (See 5 CFR 550.1404(b)(3).) An employee's time spent traveling outside of regular working hours to or from a transportation terminal (e.g., an airport or train station) within the limits of his or her official duty station is considered to be equivalent to commuting time and is not creditable travel time. (See 5 CFR 550.1404(d).) In this case, the employee spent 1 hour traveling from an airport within the limits of his official duty station.

In this example, the employee's compensatory time off for travel entitlement is as follows:

Total travel time	16 hours
<i>minus</i>	
Travel time within regular working hours	7 hours
Travel from airport within limits of official duty station	1 hour

Compensatory time off for travel **8 hours**

Example 4: Driving to and from a temporary duty station on a workday

Travel to and from a training session

6:00 - 7:00 a.m.	7:00 - 8:00 a.m.	8:00 a.m. - 4:30 p.m.	4:30 - 5:30 p.m.	5:30 - 6:30 p.m.
Drive to training session	Drive to training session	Training	Drive home	Drive home
<i>Noncreditable travel time</i>	<i>Creditable travel time</i>	<i>Regular working hours</i>	<i>Creditable travel time</i>	<i>Noncreditable travel time</i>

An employee is required to travel to a temporary duty station on a workday for a 1-day training session. The training location is a 2-hour drive from the employee's home. The employee's regular working hours are 8:00 a.m. to 4:30 p.m. In total, the employee spends 4 hours (6:00 a.m. to 8:00 a.m. and 4:30 p.m. to 6:30 p.m.) driving to and from the training session.

If an employee travels directly between home and a temporary duty station outside the limits of his or her official duty station, the time spent traveling outside regular working hours is creditable travel time. However, the agency must deduct the time the employee would have spent in normal home-to-work/work-to-home commuting. (See 5 CFR 550.1404(c).) In this case, the employee's normal daily commuting time is 2 hours (1 hour each way). Therefore, 2 hours must be deducted from the employee's creditable travel time.

In this example, the employee's compensatory time off for travel entitlement is as follows:

Total travel time	4 hours
<i>minus</i>	
Normal commuting time	2 hours
Compensatory time off for travel	2 hours

Example 5: Travel to multiple temporary duty stations on a workday

Travel from home to first presentation site

6:00 - 7:00 a.m.	7:00 - 8:00 a.m.	8:00 - 8:30 a.m.	8:30 - 10:00 a.m.	10:00 - 10:30 a.m.	10:30 - 12:00noon
Drive to airport	Wait at airport	Wait at airport	Plane departs/lands	Drive to site	Presentation
<i>Noncreditable travel time</i>	<i>Creditable travel time</i>	<i>Regular working hours</i>	<i>Regular working hours</i>	<i>Regular working hours</i>	<i>Regular working hours</i>

Travel from first presentation site to second presentation site

12:00noon to 12:30 p.m.	12:30 - 1:30 p.m.	1:30 - 2:30 p.m.	2:30 - 3:00 p.m.	3:00 - 4:30 p.m.
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Drive to airport	Wait at airport	Plane departs/ lands	Drive to site	Presentation
<i>Regular working hours</i>	<i>Regular working hours</i>	<i>Regular working hours</i>	<i>Regular working hours</i>	<i>Regular working hours</i>
<i>Travel from second presentation site to home</i>				
4:30 - 5:00 p.m.	5:00 - 5:30 p.m.	5:30 - 6:30 p.m.	6:30 - 9:30 p.m.	9:30 - 10:30 p.m.
Drive to airport	Dinner at airport	Wait at airport	Plane departs/lands	Drive home
<i>Creditable travel time</i>	<i>Noncreditable travel time</i>	<i>Creditable travel time</i>	<i>Creditable travel time</i>	<i>Noncreditable travel time</i>

An employee is required to travel on a workday to two temporary duty stations to make presentations to stakeholders. The employee's regular working hours are 8:00 a.m. to 4:30 p.m. In total, the employee spends 13.5 hours traveling (6:00 a.m. to 10:30 a.m., 12:00 noon to 3:00 p.m., and 4:30 p.m. to 10:30 p.m.) between home and the two presentation sites. However, the time between 8:00 a.m. and 4:30 p.m. is compensable as the employee's regular working hours. Also, the 2 hours the employee spends traveling outside of regular working hours to and from the airport within the limits of the official duty station is not creditable travel time. Finally, the 30 minutes the employee spends having dinner while waiting at the airport on the return home is considered a bona fide meal period and is not creditable travel time.

In this example, the employee's compensatory time off for travel entitlement is as follows:

Total travel time	13.5 hours
<i>minus</i>	
Travel time within regular working hours	5.5 hours
Travel to/from airport within limits of official duty station	2 hours
Bona fide meal period	0.5 hour
Compensatory time off for travel	5.5 hours

**U.S. Department of Justice**

Executive Office for Immigration Review

Administration Division

*5107 Leesburg Pike, Suite 2300
Falls Church, Virginia 22041*

February 16, 2005

MEMORANDUM TO: All EOIR Employees
EOIR T&A Coordinators

FROM: Jesse White
Deputy Assistant Director
for Human Resources

SUBJECT: Interim Guidance for Compensatory Time Off for Travel
Under the Federal Workforce Flexibility Act of 2004

Subject. Reference section 203 of the Federal Workforce Flexibility Act of 2004, Public Law 108-411, October 30, 2004. This memorandum implements EOIR procedures for requesting and processing compensatory time off for time spent by an employee in a travel status away from the employee's official duty station when such time is not otherwise compensable. Compensatory time off for travel is an entitlement that has not existed previously. It was created by the Federal Workforce Flexibility Act of 2004, and is mandatory for most employees of the Department of Justice.

Scope. This memorandum applies to employees of the Executive Office for Immigration Review as defined in 5 U.S.C. 5541(2) (employees for this entitlement do not include Members of the Senior Executive Service, Attorneys, Immigration Judges, or Federal Wage System employees). The Federal regulation governing compensatory time off for travel, 5 CFR 550, on which this memorandum is based, is an interim regulation, subject to change by the Office of Personnel Management. This memorandum is effective on January 28, 2005 (Pay Period 2 of FY05).

Approval Requirements. Approval for this type of compensatory time is similar to other forms of approved compensatory time. Please ensure that all approved requests to accrue compensatory time off for travel are contained in the time and attendance file for each employee. Each approval must contain a signature from the appropriate supervisory official.

Crediting compensatory time off. All requests to accrue compensatory time off for travel must be made by the employee within 15 calendar days from the time he/she returns from travel status and approved by the supervisor in writing within 30 calendar days from the time the employee returns from travel status. A copy of the approved travel voucher must be attached to the request. Compensatory time off for travel will be requested on the time and

attendance worksheet (attached). Subject to supervisory approval, actual travel time and “usual waiting time” are the only amounts of time that are creditable. Bona fide meal periods and time used for the employee’s own purposes are not creditable. Credit will be granted in terms of one quarter hour increments (15 minutes). The component must credit an employee with compensatory time off for creditable time in a travel status.

Usage of accrued compensatory time off. An employee must request permission from his/her supervisor to schedule the use of his/her accrued time off, as with annual leave usage requests.

Forfeiture of unused compensatory time off. Accrued compensatory time off for travel must be used by the end of the 26th pay period after the pay period during which it was credited. Exceptions are referenced in 5 CFR 550.1407 for employees who separate or are in a leave without pay status to perform service in the uniform services or who are in a leave without pay status because of an on-the-job injury with entitlement to injury compensation.

Prohibition against payment for unused compensatory time off. An employee or surviving beneficiary may not receive payment under any circumstances for any unused compensatory time off for travel he/she earned.

Inapplicability of premium pay and aggregate pay caps. Accrued compensatory time off for travel is not considered in applying the premium pay and aggregate limitations on pay.

Time and Attendance Reporting Codes. The Time and Attendance Prefix and Transaction Codes for use in the most recent Web-based T&A application (effective in Pay Period 03, 2005) are 78/32 for Earned and 78/64 for Used. Special instructions apply for manual recording in Pay Period 2, 2005, as highlighted in the attached guidance.

Sub-object classification codes. The Sub-object classification codes (SOC) for recording travel compensatory time off:

- SOC 1426: Travel Compensatory Time Off Earned
- SOC 1446: Travel Compensatory Time Off Used

Bureau bi-weekly accounting feeds will begin to contain these SOC's in the transmission for pay period 3, week one, on or about March 1, 2005.

Definitions.

Compensable refers to periods of time that are creditable as hours of work for the purpose of determining a specific pay entitlement, even when that work time may not actually generate additional compensation because of applicable pay limitations.

Compensatory time means credited hours while on travel as allowed under the authority of this Bulletin.

Official duty station means the geographic area surrounding an employee's regular work site that is the same as the area designated by the employing component of the Department for the purpose of determining whether travel time is compensable for the purpose of determining overtime pay.

Regular working hours means the days and hours of an employee's regularly scheduled administrative workweek established under 5 CFR 610.

Scheduled tour of duty for leave purposes means an employee's regular hours for which he or she may be charged leave under 5 CFR part 630 when absent. For full-time employees, this is the 40-hour basic workweek as defined in 5 CFR 610.102. For employees with an uncommon tour of duty as defined in 5 CFR 630.201, it is the uncommon tour of duty.

Travel means officially authorized travel, i.e., travel for work purposes, that is approved by an authorized Department official or otherwise authorized under established DOJ policies.

Travel status means travel time as described below that is creditable in accruing compensatory time off for travel under this Bulletin, excluding travel time that is otherwise compensable under other legal authority.

Creditable travel time.

- *General.* Subject to the conditions specified in this Bulletin, an employee must be credited with compensatory time off for time in a travel status if:
 - The employee is required to travel away from the official duty station outside the scheduled tour of duty; and
 - The travel time is not otherwise compensable hours of work under other legal authority.
- *Travel status.*
 - Time in a travel status includes the time an employee actually spends traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel, subject to the exclusions specified in this Bulletin. Time spent at a temporary duty station between arrival and departure is not time in a travel status. The "usual waiting time" at a transportation terminal is normally one hour for domestic travel, or two hours for international travel, and will be limited to those amounts unless otherwise specified by the carrier due to heightened security status, anticipated passenger levels, local travel conditions, or other bona fide reasons.

- Bona fide meal periods during actual travel time or waiting time are not creditable as time in a travel status. For example, if a traveler has a meal en route to or from a transportation terminal, the added time taken for the meal is not creditable as time in a travel status.
- If an employee experiences an extended (i.e., not usual) waiting time between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, the extended waiting time is not creditable as time in a travel status.
- *Travel between home and a temporary duty station.*
 - If an employee is required to travel directly between his or her home and a temporary duty station outside the limits of the employee's official duty station, the travel time is creditable as time in a travel status if otherwise qualifying under this Bulletin. However, the component must deduct from such travel hours the time the employee would have spent in normal home-to-work or work-to-home commuting.
 - In the case of an employee who is authorized one mode of transportation and who uses an alternative mode of transportation, or who travels at a time or by a route other than that authorized by his or her component, the approving official of compensatory time off must determine the estimated amount of time in a travel status the employee would have had if the employee had used the mode of transportation authorized by the component or traveled at the time and by the route authorized by the component. In determining time in a travel status, the component must credit the employee with the lesser of the estimated time in a travel status or the actual time in a travel status.
 - In the case of an employee who is on a multiple-day travel assignment and who chooses, for personal reasons, not to use temporary lodgings at the temporary duty station, but to return home at night or on a weekend, only travel from home to the temporary duty station on the first day and travel from the temporary duty station to home on the last day that is otherwise qualifying as time in a travel status is mandatorily creditable (subject to the deduction of normal commuting time). Travel to and from home on other days is not creditable travel time unless the component, at its discretion, determines that credit should be given based on the net savings to the Government from reduced lodging costs, considering the value of lost labor time attributable to compensatory time off. The dollar value of an hour of compensatory time off for this purpose is equal to the employee's hourly rate of basic pay as defined in 5 CFR 550.103.
- *Time spent traveling to or from a transportation terminal as part of travel away from the official duty station.*

- If an employee is required to travel between home and a transportation terminal (e.g., airport or train station) within the limits of his or her official duty station as part of travel away from that duty station, the travel time outside regular working hours to or from the terminal is considered to be equivalent to commuting time and is not creditable time in a travel status.
- If the transportation terminal is outside the limits of the employee's official duty station, the travel time to or from the terminal outside regular working hours is creditable as time in a travel status, but is subject to an offset for the time the employee would have spent in normal home-to-work or work-to-home commuting.
- If the employee travels between a worksite and a transportation terminal, the travel time outside regular working hours is creditable as time in a travel status, and no commuting time offset applies.

Attachments

TIME AND ATTENDANCE WORKSHEET

Pay Period No.	From		To		Name		SSN					
FIRST WEEK	Wk Hrs T/C 01	Sick Lv T/C 62	Annual Lv. T/C 61	Holiday T/C 66	O/T (40+) T/C 21	O/T (8+) T/C 19	Comp Time Used	Comp Time Earned	Comp Time Travel Earned	AWOL	LWOP	AWS
01 Sunday												
02 Monday												
03 Tuesday												
04 Wednesday												
05 Thursday												
06 Friday												
07 Saturday												
1 st Week Totals:												
Acctg Codes												
SECOND WEEK	Wk Hrs T/C 01	Sick Lv T/C 62	Ann Lv. T/C 61	Hol. T/C 66	O/T (40+) T/C 21	O/T (8+) T/C 19	Comp Time Used	Comp Time Earned	Comp Time Travel Earned	AWOL	LWOP	AWS
08 Sunday												
09 Monday												
10 Tuesday												
11 Wednesday												
12 Thursday												
13 Friday												
14 Saturday												
2 nd Week Totals:												
Acctg Codes:												

NOTE: ATTACH ALL LEAVE SLIPS, OVERTIME AND COMPENSATORY TIME APPROVAL SLIPS

I certify that this time is accurate and understand that false or inaccurate reporting of time could result in disciplinary action.
 Employee/Date: _____ Supervisor/Date: _____



U.S. Department of Justice

Executive Office for Immigration Review

Administration Division

5107 Leesburg Pike, Suite 2300
Falls Church, Virginia 22041

February 16, 2005

MEMORANDUM TO: EOIR T&A Coordinators

FROM: Jesse White
Deputy Assistant Director
for Human Resources

SUBJECT: Processing New Compensatory Time Off for Travel

Effective January 28, 2005, Compensatory Time Off for Travel (Travel Comp) was established by section 203 of the Federal Worklife Flexibility Act of 2004, dated October 30, 2004. In accordance with interim Departmental guidance, this new form of Comp must be entered on the Time and Attendance Report (T&A) as follows.

Pay Period 02. Timekeepers must manually monitor travel comp time earned and used. For all T&A applications, travel comp earned or used between January 28, 2005 and February 5, 2005, must be reflected in the T&A Remarks block. If timekeepers have already transmitted T&As for Pay Period 02, it is important to reflect any travel comp earned or used in the Remarks block of the T&A. Please update the Remarks block accordingly.

Pay Period 02 data for Travel Comp cannot be added to TINQ until the system changes for Travel Comp are completed (estimated completion date: Pay Period 06).

NOTE: DO NOT SUBMIT A CORRECTED T&A FOR PAY PERIOD 02, 2005, FOR TRAVEL COMP.

Pay Period 03 and after. Beginning February 16th, for STAR Web, use Prefix 78 with Transaction Code (TC) 32 for Travel Comp Earned and Prefix 78 with TC 64 for Travel Comp Used (hours earned or used February 6th or after). For other than STAR Web, Travel Comp earned or used must be reflected in the T&A Remarks block. The hours used should be reported under TC 66 (Other Leave), since such time is not time worked.

Forfeiture. There is no limit on the number of hours that may be earned for Travel Comp. However, Travel Comp must be used by the end of the 26th pay period after such earned time is credited. This form of new Comp is not payable under any circumstances.

Important Notes. DOJ attorneys, Federal Wage System employees, and members of the Senior Executive Service are not entitled to this new Travel Comp. As with other forms of compensation, hours otherwise compensable cannot be credited as Travel Comp. For example, if a Criminal Investigator's hours outside the normal work schedule are hours counted toward the eligibility of Availability Pay, those same hours cannot be counted as Travel Comp (regardless of whether Availability Pay was cut back due to the biweekly limit on premium pay).

If you have any questions on this notice, please contact Gary Russell on (703) 605-0373.

Attachment D

Travel Comp Time Authorization Form

Name of Employee/Traveler: _____

Proposed Travel Dates: _____

Travel Destination: _____

Purpose of trip: _____

Reason for requiring travel outside normal hours: _____

Estimated amount of travel comp time to be earned on this trip: _____

Attachment E

Travel Comp Time Worksheet/Approval Form

Name of Employee/Traveler: _____

Travel Destination: _____

Dates of travel: _____

Time of departure: _____

Departed from (home, office, etc.): _____

Employee's tour of duty (e.g., 8:30 a.m. to 5:00 p.m.): _____

Distance (in miles) and the time (to nearest 15 minutes) from the employee's home to normal duty location: _____miles _____hours/minutes

Time of arrival back home from travel: _____

Time used for the employee's own purposes (including meals) during travel outbound and on return: _____

Total amount of travel comp time being claimed: _____

Calculations: